

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

DAVID BENNETT,

Plaintiff,

vs.

CITY AND COUNTY OF SAN FRANCISCO  
(General Services Agency, - Real Estate  
Division),

Defendant(s).

Case No.: 11-CV-06403 YGR

ORDER GRANTING MOTION OF CITY AND  
COUNTY OF SAN FRANCISCO TO DISMISS  
WITH LEAVE TO AMEND

Plaintiff David Bennett brings this civil rights action against his former employer the City and County of San Francisco for race discrimination and retaliation. Plaintiff brings two claims under 42 U.S.C. § 1981: (1) Race and Color Discrimination; and (2) Retaliation.

Defendants have filed a Motion to Dismiss the Complaint on the grounds that Plaintiff has failed to allege an impaired contractual right to employment.

Having carefully considered the papers submitted and the pleadings in this action, and for the reasons set forth below, the Court hereby **GRANTS** the Motion to Dismiss **WITH LEAVE TO AMEND**.<sup>1</sup>

Section 1981 protects the right to make and enforce contracts without respect to race. *Domino's Pizza, Inc. v. McDonald*, 546 U.S. 470, 474-75 (2006).<sup>2</sup> Specifically, it guarantees "[a]ll

<sup>1</sup> Pursuant to Federal Rule of Civil Procedure 78(b) and Civil Local Rule 7-1(b), the Court finds that this motion, which has been noticed for hearing on June 26, 2012, is appropriate for decision without oral argument. Accordingly, the Court **VACATES** the hearing set for June 26, 2012.

<sup>2</sup> Specifically, subsection (a) provides that:

All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to

persons . . . the same right . . . to make and enforce contracts . . . as is enjoyed by white citizens.” 42 U.S.C. § 1981(a). “[T]he term ‘make and enforce contracts’ includes the making, performance, modification, and termination of contracts, and the enjoyment of all benefits, privileges, terms, and conditions of the contractual relationship.” 42 U.S.C. § 1981(b).

In order to state a cause of action under section 1981, a plaintiff must “identify an impaired contractual relationship,’ under which the plaintiff has rights.” *Domino’s Pizza, Inc., supra*, 546 U.S. at 476 (internal citation omitted). Plaintiff’s complaint does not identify a contractual relationship that was impaired by Defendant’s alleged conduct. Therefore, he has failed to state a claim for an impaired contractual relationship under section 1981.


The Motion to Dismiss is **GRANTED**.

By no later than June 29, 2012 Plaintiff may file an amended complaint.

This Order Terminates Docket Number 13.

**IT IS SO ORDERED.**

**Date: June 6, 2012**

  
**YVONNE GONZALEZ ROGERS**  
**UNITED STATES DISTRICT COURT JUDGE**

the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.  
 42 U.S.C. § 1981(a).